

SENATE BILL 2949

By Haynes

AN ACT to amend Tennessee Code Annotated, Title 4,
Title 37, Chapter 17 and Title 68, to create the
"Tennessee Dry Cell Battery Recycling Act of
2008."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding the following
as a new chapter:

§ 68-218-101. This chapter shall be known and may be cited as the "Tennessee Dry
Cell Battery Recycling Act of 2008."

§ 68-218-102. As used in this chapter, unless the context otherwise requires:

- (1) "Commissioner" means the commissioner of environment and conservation;
- (2) "Consumer mercuric oxide battery" means any button or coin shaped
mercuric oxide battery which is purchased at retail by a consumer for personal or
household use;
- (3) "Department" means the department of environment and conservation;
- (4) "Distributor" means a person who sells dry cell batteries at wholesale to
retailers in this state, including any manufacturer who engages in these sales, except
that a "distributor" shall not include any wholesaler or distributor owned cooperatively by
retailers;
- (5) "Dry cell battery" means any type of button, coin, cylindrical, rectangular or
other shaped, enclosed device or sealed container consisting of a combination of two (2)
or more voltaic or galvanic cells, electrically connected to produce electric energy,
composed of lead, lithium, manganese, mercury, mercuric oxide, silver oxide, cadmium,
zinc, copper or other metals, or any combination thereof, and designed for commercial,
industrial, medical, institutional or household use, including any alkaline manganese,

lithium, mercuric oxide, silver oxide, zinc-air or zinc-carbon battery, nickel-cadmium rechargeable battery or sealed lead rechargeable battery;

(6) "Institutional generator" means the owner or operator of any public or private, commercial or industrial establishment or facility, including any establishment owned or operated by, or on behalf of, a governmental agency, health care facility or hospital, licensed or other authorized hearing aid dispenser, research laboratory or facility, who routinely uses large quantities of mercuric oxide batteries or nickel-cadmium or sealed lead rechargeable batteries. "Institutional generator" also means the owner or operator of any public or private facility identified by the department that generates at least two hundred twenty pounds (220 lbs) of such types of used dry cell batteries per month, or the owner or operator of any public or private facility that accumulates two hundred twenty pounds (220 lbs) of such types of used dry cell batteries at any time;

(7) "Lithium battery" means any button, coin, cylindrical, rectangular or other shaped dry cell battery consisting of lithium and other chemicals commonly used in pocket calculators, wrist watches and other electrical appliances;

(8) "Manufacturer" means a person producing dry cell batteries for sale to institutional generators, distributors, retailers, small quantity generators or consumers;

(9) "Mercuric oxide battery" means any button, coin, cylindrical, rectangular or other shaped dry cell battery consisting of zinc, potassium and mercury oxide which is designed or sold for commercial, industrial, medical or institutional use;

(10) "Nickel-cadmium rechargeable battery" means any button, coin, cylindrical, rectangular or other shaped dry cell battery composed of cadmium and nickel which is designed for reuse and is capable of being recharged after repeated uses, and which has a useful life of at least twelve (12) months, except that "nickel-cadmium rechargeable battery" shall not include any dry cell battery used as a backup power

source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to operate if the primary energy supply fails or fluctuates momentarily;

(11) "Rechargeable battery" means any nickel-cadmium rechargeable battery or sealed lead rechargeable battery;

(12) "Rechargeable consumer product" means any product, including, but not limited to, a cordless electrical tool or appliance, containing a nickel-cadmium rechargeable battery or a sealed lead rechargeable battery, which is purchased at retail and commonly used for personal or household purposes;

(13) "Retailer" means a person engaged in the sale of rechargeable batteries to any consumer at retail, whether or not the seller has a physical presence in this state;

(14) "Sealed lead rechargeable battery" means any button, coin, cylindrical, rectangular or other shaped dry cell battery composed of lead and other chemicals which is designed for reuse and is capable of being recharged after repeated uses, and which has a useful life of at least twelve (12) months;

(15) "Silver oxide battery" means any button, coin, cylindrical, rectangular or other shaped dry cell battery consisting of silver oxide, potassium hydroxide or sodium hydroxide and zinc, and mercury commonly used in wrist watches and other electrical appliances;

(16) "Solid waste container" means a receptacle, container or bag suitable for the depositing of solid waste;

(17) "Solid waste facilities" mean and include the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all

vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner;

(18) "Small quantity generator" means the owner or operator of any public or private, commercial or industrial establishment or facility, including any establishment owned or operated by, or on behalf of, a governmental agency, health care facility or hospital, licensed or other authorized hearing aid dispenser, research laboratory or facility, who routinely uses small quantities of mercuric oxide batteries or nickel-cadmium or sealed lead rechargeable batteries. "Small quantity generator" also means the owner or operator of any public or private facility identified by the department that generates less than two hundred twenty pounds (220 lbs) of these types of used dry cell batteries per month, or the owner or operator of any public or private facility that accumulates over twenty pounds (20 lbs) but less than two hundred twenty pounds (220 lbs) of such types of used dry cell batteries at any time; and

(19) "Zinc-air battery" means any button, coin, cylindrical, rectangular or other shaped dry cell battery consisting of zinc, potassium hydroxide and commonly used in hearing aids, photographic equipment and electrical appliances.

§ 68-218-103.

(a) No person shall sell, offer for sale, or offer for promotional purposes in this state any mercuric oxide battery or any nickel-cadmium or sealed lead rechargeable battery, unless the manufacturer thereof has obtained the prior written approval of the department of a plan for the collection, transportation, recycling or proper disposal of such used dry cell batteries pursuant to § 68-218-104.

(b) Any two (2) or more manufacturers may submit a joint plan to the department for any specified mercuric oxide battery or rechargeable battery manufactured by them.

(c) Every manufacturer shall be liable, at the manufacturer's own expense, for the environmentally sound collection, transportation, recycling or proper disposal of every used mercuric oxide battery, or used nickel-cadmium or sealed lead rechargeable battery that is produced by such manufacturer and sold or offered for promotional purposes in this state.

(d) Manufacturers may establish or utilize a trade association or a consortium comprised of members of the dry cell battery industry, as appropriate, in order to facilitate compliance with the requirements of this chapter.

§ 68-218-104.

(a)

(1) Every manufacturer of mercuric oxide batteries, nickel-cadmium rechargeable batteries or sealed lead rechargeable batteries sold or offered for promotional purposes in this state shall submit to the department, in writing, a battery management plan for the environmentally sound collection, transportation recycling or proper disposal of such used dry cell batteries produced by the manufacturer.

(2) Prior to submission to the department of a battery management plan, every manufacturer of nickel-cadmium or sealed lead rechargeable batteries shall consult with distributors and retailers of the rechargeable batteries produced by that manufacturer. No battery management plan shall require a retail establishment where food or food products are sold or offered for sale directly to the consumer for consumption off the premises of the retail establishment to accept the return of used rechargeable batteries.

(b) Each battery management plan submitted by a manufacturer shall include, but not be limited to:

(1) Designation of the collector, transporter, processor or collection system to be utilized by the manufacturer, or by the county or municipality, institutional generator, retailer or small quantity generator on behalf of the manufacturer, for the collection, transportation, recycling or proper disposal of used mercuric oxide batteries or used rechargeable batteries in each county, including, as appropriate, evidence of contracts or agreements entered into therefore;

(2) Designation of the funding source or mechanism to be utilized by the manufacturer to defray the costs of implementing the battery management plan;

(3) A strategy for informing consumers, on any store display promoting the sale or use of the rechargeable batteries manufactured, that these types of used dry cell batteries may not enter the solid waste stream, and that a convenient mechanism for the collection, transportation, recycling or proper disposal of used rechargeable batteries is available to the consumer; and

(4) A statewide consumer education program to assure the widespread dissemination of information concerning the environmental impact of the improper disposal of used mercuric oxide batteries or rechargeable batteries, and to inform consumers that manufacturers of these types of dry cell batteries are liable for their environmentally sound disposal.

(c) Any manufacturer seeking approval of a battery management plan for the environmentally sound collection, transportation, recycling or proper disposal of any specified used mercuric oxide battery, used nickel-cadmium or sealed lead rechargeable battery that it manufactures shall submit the plan to the department for its review and approval.

(d) The department shall promptly review all plans submitted pursuant to this section. The department shall, within thirty (30) days of the receipt of a plan, request that the manufacturer submit additional information to assist in its review if it deems that such information is necessary. If no such request is made, the plan shall be construed to be completed. If additional information is requested, the plan shall be construed to be completed when the additional information is received by the department.

(e) The department shall approve or deny a plan within forty-five (45) days of receipt of a completed plan. If the department fails to take action on a plan within the forty-five (45) day period then the plan shall be deemed to have been approved.

(f) The department shall review any battery management plan submitted by a manufacturer and approved pursuant to this section at least once every twenty-four (24) months following its initial approval. If the department finds, in writing, that the plan is no longer a convenient or economically feasible method for the collection, transportation, recycling or proper disposal of these types of used dry cell batteries, the department may require the manufacturer to submit a new or revised plan for its review and approval; provided, however; any previously approved plan shall remain in effect until such time as a new or revised plan is approved by the department.

(g) The commissioner shall maintain on file in the department, for public inspection, copies of any battery management plan received by the department pursuant to this section. The department shall provide a copy to any person upon request at a cost not to exceed the cost of reproduction.

(h) Manufacturers may establish an advisory council comprised of members of the dry cell battery industry, institutional generators, retailers, small quantity generators and county representatives in order to facilitate the collection, transportation, recycling or

proper disposal of used mercuric oxide batteries or used rechargeable batteries in this state.

§ 68-218-105.

(a) Every manufacturer of dry cell batteries sold or offered for promotional purposes in this state shall prepare and submit to the department, in writing, a dry cell battery collection plan to expand or increase the statewide collection, recycling or proper disposal of all used dry cell batteries produced by that manufacturer.

(b) Each dry cell battery collection plan submitted by a manufacturer shall include, but not be limited to, a strategy for expanding and increasing the collection, recycling or proper disposal of all used dry cell batteries in each county, including, but not limited to, those alkaline manganese, consumer mercuric oxide or zinc-carbon batteries manufactured prior to the effective date of this chapter.

§ 68-218-106 Within fifteen (15) months of the effective date of this chapter and at least once every six (6) months thereafter, every manufacturer of mercuric oxide batteries or rechargeable batteries and every manufacturer of dry cell batteries shall each submit a written report to the department on used dry cell battery return or recovery rates in accordance with rules and regulations adopted by the department.

§ 68-218-107.

(a) No person shall knowingly dispose of used mercuric oxide batteries as solid waste at any time.

(b) Any person seeking to dispose of used mercuric oxide batteries may:

(1) Transport such batteries to a household hazardous waste collection site established pursuant to a county household hazardous waste collection program;

(2) Place such batteries for collection in a manner provided by municipal ordinance where the recycling plan as approved by the department requires the collection and disposition of used dry cell batteries as a designated source separated recyclable material; or

(3) Collect, transport, recycle or dispose of these types of used dry cell batteries as otherwise provided by the battery management plan required pursuant to § 68-218-104.

§ 68-218-108.

(a) No person shall knowingly dispose of used nickel-cadmium rechargeable batteries or used sealed lead rechargeable batteries as solid waste at any time.

(b) Any person seeking to dispose of used nickel-cadmium or sealed lead rechargeable batteries derived from household use may:

(1) Return the batteries to a retailer, unless otherwise provided by the battery management plan;

(2) Transport the batteries to a household hazardous waste collection site established pursuant to a county household hazardous waste collection program;

(3) Place the batteries for collection in a manner provided by municipal ordinance where the recycling plan as approved by the department requires the collection and disposition of used dry cell batteries as a designated source separated recyclable material; or

(4) Collect, transport, recycle or dispose of the batteries as otherwise provided by the battery management plan.

§ 68-218-109.

(a) No solid waste collector shall, at any time, knowingly collect used mercuric oxide batteries, used nickel-cadmium rechargeable batteries or used sealed lead rechargeable batteries placed for collection and disposal as solid waste.

(b) A solid waste collector may refuse to collect the contents of a solid waste container containing a visible quantity of used mercuric oxide batteries or used rechargeable batteries.

§ 68-218-110.

(a) No solid waste facility in this state shall knowingly accept for disposal any truckload or roll-off container of solid waste containing a visible quantity of used mercuric oxide batteries, used nickel-cadmium rechargeable batteries or used sealed lead rechargeable batteries at any time.

(b) The owner or operator of a solid waste facility may refuse to accept for disposal any truckload or roll-off container of solid waste containing a visible quantity of used mercuric oxide batteries or used rechargeable batteries.

§ 68-218-111.

(a) Except as otherwise provided in the battery management plan as approved by the department pursuant to this chapter, every retailer shall:

(1) Accept from customers at any time during business hours up to three (3) used nickel-cadmium rechargeable batteries or sealed lead rechargeable batteries derived from household use, of the type and size the retailer sells or offers for sale;

(2) Conspicuously post and maintain, at or near the point of display, a legible sign, informing customers that used rechargeable batteries of the type and size sold or offered for sale by the retailer may not enter the solid waste stream, and that the retail establishment is a collection site for the recycling or

proper disposal of these types of used dry cell batteries. The sign shall be of a size that is plainly visible to the average person entering the building, premises or property and shall contain the following inscription:

"IT IS ILLEGAL TO DISPOSE OF USED NICKEL-CADMIUM OR SEALED LEAD RECHARGEABLE BATTERIES IN THIS STATE AS SOLID WASTE"; and

"STATE LAW REQUIRES US TO ACCEPT USED NICKEL-CADMIUM OR SEALED LEAD RECHARGEABLE BATTERIES FOR RETURN TO THE MANUFACTURER"; and

(3) Conspicuously provide or maintain, at a convenient location within the retail establishment, collection boxes or other suitable receptacles into which customers may deposit used nickel-cadmium or sealed lead rechargeable batteries accepted by the retailer.

(b) Except as otherwise provided in a battery management plan approved by the department pursuant to § 68-218-104 a distributor or the distributor's agent shall accept the return of all used nickel-cadmium or sealed lead rechargeable batteries he distributed in the distributor's or distributor's agent's service area from a retailer.

(c) Every manufacturer, at the manufacturer's own expense, shall accept from distributors and retailers the return of all used nickel-cadmium or sealed lead rechargeable batteries manufactured, as provided in the battery management plan. A manufacturer shall, upon return of a used dry cell battery, provide for its proper disposal or recycling.

§ 68-218-112.

(a) The department is hereby directed to promulgate rules and regulations for the on-site source separation, collection and disposal of all applicable batteries generated at industrial and small quantity generators.

(b) Notwithstanding of subsection (a), every institutional or small quantity generator shall source-separate used mercuric oxide batteries, nickel-cadmium rechargeable batteries and sealed lead rechargeable batteries for collection and disposal in the manner provided in the battery management plan as required by this chapter.

§ 68-218-113

The department may require the owner or operator of any resource recovery facility, in conjunction with the governing body of the county where the resource recovery facility is located, to implement a countywide used dry cell battery source separation and collection program to ensure that any used dry cell batteries found to be of particular concern are removed from the solid waste stream prior to acceptance for disposal at the resource recovery facility. The implementation of such program shall be subject to the approval of the department. As used in this section, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse.

§ 68-219-114.

(a)

(1) The commissioner of environment and conservation shall administer and enforce the provisions of this chapter.

(2) The commissioner may:

(A) Issue any necessary orders to enforce the provisions of this act, and all rules and regulations promulgated pursuant to this chapter;

(B) Institute proceedings to enjoin violations of this chapter, rules and regulations promulgated pursuant to this act, or orders issued pursuant to this section; and

(C) Assess civil penalties against any person who violates or fails to comply with the provisions of this chapter, or rules and regulations promulgated pursuant to this chapter in the manner specified in this chapter.

(b) Financial or proprietary information submitted to the department in response to any audit or inspection conducted pursuant to this act shall be exempt from public disclosure.

SECTION 2. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. For the purpose of submitting the battery management plan pursuant to § 68-218-104 and the dry cell battery collection plan pursuant to § 68-218-105, this act shall take effect September 1, 2009. For all other purposes this act shall take effect January 1, 2009, the public welfare requiring it.